IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

THOMAS WHATLEY III,	§	
Plaintiff	§	
	§	CIVIL ACTION NO.
vs.	§	
	§	Jury Trial Demanded
COMMONWEALTH FINANCIAL	§	
SYSTEMS, INC. d/b/a NCC, and	§	
PENDRICK CAPITAL PARTNERS,	§	
LLC,	§	
Defendants	§	

ORIGINAL COMPLAINT

NATURE OF ACTION

1. This is an action for damages under the Fair Debt Collection Practices Act, ("FDCPA"), 15 U.S.C. § 1692 *et seq.*, the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227, and Tex. Bus. & Com. Code § 305.053.

JURISDICTION AND VENUE

2. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d), 47 U.S.C. § 227(b)(3), 28 U.S.C. § 1331, and 28 U.S.C. § 1367(a).

3. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(b), where the acts and transactions giving rise to Plaintiff's action occurred in this district, where Plaintiff resides in this district, and where Defendants transact business in this district.

PARTIES

4. Plaintiff, Thomas Whatley III ("Plaintiff"), is a natural person residing in the State of Texas, and the County and City of Denton.

5. Plaintiff is a “consumer” as defined by 15 U.S.C. § 1692a(3).

6. Defendant CommonWealth Financial Systems, Inc. (“NCC”) is an entity which at all relevant times was engaged, by use of the mails and telephone, in the business of attempting to collect a “debt” from Plaintiff, as defined by 15 U.S.C. § 1692a(5).

7. NCC is a “debt collector” as defined by 15 U.S.C. § 1692a(6).

8. Defendant, Pendrick Capital Partners, LLC, (“Pendrick”) is an entity who acquires debt in default merely for collection purposes, and who at all relevant times was engaged in the business of attempting to collect a debt from Plaintiff.

9. Pendrick is a “debt collector” as defined by 15 U.S.C. § 1692a(6).

FACTUAL ALLEGATIONS

10. Plaintiff is a natural person obligated, or allegedly obligated, to pay a debt owed or due, or asserted to be owed or due a creditor other than NCC.

11. Plaintiff’s alleged obligation arises from a transaction in which the money, property, insurance, or services that are the subject of the transaction were incurred primarily for personal, family, or household purposes—namely, personal medical services (the “Debt”).

12. NCC uses instrumentalities of interstate commerce or the mails in a business the principal purpose of which is the collection of any debts, and/or regularly collects or attempts to collect, directly or indirectly, debts owed or due, or asserted to be owed or due another.

13. Pendrick purchases debts once owed or once due, or asserted to be once owed or once due a creditor.

14. 13. Pendrick acquired Plaintiff's debt once owed or once due, or asserted to be once owed or once due a creditor, when the debt was in default.

15. Pendrick retained NCC to collect the Debt from Plaintiff on its behalf.

16. In connection with the collection of the Debt, NCC placed a telephone call to Plaintiff's cellular telephone on February 14, 2014 and delivered a truncated prerecorded voicemail message.

17. The February 14, 2014 voicemail message failed to disclose NCC's identity.

18. The February 14, 2014 voicemail message failed to disclose either that the communication was from a debt collector or that the communication was an attempt to collect a debt and that any information obtained would be used for that purpose.

19. Upon information and belief, the February 14, 2014 communication was NCC's initial communication with Plaintiff.

20. NCC failed to provide Plaintiff with the disclosures required by 15 U.S.C. § 1692g(a) in its initial communication or in writing within five days thereafter.

21. In response to the February 14, 2014 voicemail message, Plaintiff telephoned NCC that same day to discover its corporate identity.

22. In connection with the collection of the Debt, NCC placed a telephone call to Plaintiff on February 18, 2014 and delivered a truncated prerecorded voicemail message.

23. The February 18, 2014 voicemail message failed to disclose NCC's identity.

24. The February 18, 2014 voicemail message failed to disclose that the communication was from a debt collector.

25. NCC placed at least 26 additional calls to Plaintiff's cellular telephone.

26. On the occasions that NCC left a voicemail message, NCC delivered such message via a prerecorded voice.

27. On March 15, 2014, Plaintiff received a call from NCC and a prerecorded message instructed him to wait on the line for a live person.

28. When Plaintiff received a live person, he confirmed his identity.

29. Nevertheless, NCC failed to disclose that it is a debt collector during the communication.

30. NCC's agent and/or employee also failed to disclose his individual identity.

31. On March 20, 2014, Plaintiff returned one of NCC's telephone calls.

32. During the March 20, 2014 telephone conversation, Plaintiff demanded that NCC cease and desist all calls to his cellular telephone.

33. In response, NCC threatened that such calls would continue.

34. Of the above referenced calls, at least 8 occurred following the March 20, 2014 conversation.

35. In an attempt to collect the Debt, NCC sent Plaintiff its initial written communication dated March 4, 2014.

36. Upon information and belief, the telephone calls identified above were placed to Plaintiff's cellular telephone number using an automatic telephone dialing system and/or an artificial or pre-recorded voice.

37. NCC did not place any telephone calls to Plaintiff for emergency purposes.

38. NCC did not have Plaintiff's prior express consent to make telephone calls to Plaintiff's cellular telephone number.

39. Upon information and belief, NCC placed the telephone calls to Plaintiff identified above voluntarily.

40. Upon information and belief, NCC placed the telephone calls to Plaintiff identified above under its own free will.

41. Upon information and belief, NCC had knowledge that it was using an automatic telephone dialing system to place each of the telephone calls identified above.

42. Upon information and belief, NCC intended to use an automatic telephone dialing system to place each of the telephone calls identified above.

43. Upon information and belief, NCC maintains business records that show all calls NCC placed to Plaintiff's cellular telephone number.

44. On January 29, 2014, Plaintiff had open heart surgery.

45. Each of the above calls (and such additional calls as may be discovered) were placed while Plaintiff attempted to recuperate from his surgery and upset Plaintiff's healing process.

46. NCC's conduct has caused Plaintiff stress and aggravation of his health.

COUNT I
VIOLATION OF 15 U.S.C. § 1692d
NCC

47. Plaintiff repeats and re-alleges each and every factual allegation above.

48. NCC violated 15 U.S.C. § 1692d by engaging in conduct the natural consequence of which is to harass, oppress, or abuse Plaintiff, in connection with the collection of an alleged debt.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

a) Adjudging that NCC violated 15 U.S.C. § 1692d;

b) Awarding Plaintiff statutory damages, pursuant to 15 U.S.C. § 1692k(a)(2)(A), in the amount of $1,000.00;

c) Awarding Plaintiff actual damages, pursuant to 15 U.S.C. § 1692k(a)(1);

d) Awarding Plaintiff reasonable attorneys' fees and costs incurred in this action pursuant to 15 U.S.C. § 1692k(a)(3);

e) Awarding Plaintiff pre-judgment and post-judgment interest as permissible by law; and

f) Awarding such other and further relief as the Court may deem just and proper.

COUNT II
VIOLATION OF 15 U.S.C. § 1692d(6)
NCC

49. Plaintiff repeats and re-alleges each and every factual allegation above.

50. NCC violated 15 U.S.C. § 1692d(6) by placing telephone calls without meaningfully disclosing the caller's individual and/or corporate identity.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

a) Adjudging that NCC violated 15 U.S.C. § 1692d(6);

b) Awarding Plaintiff statutory damages, pursuant to 15 U.S.C. § 1692k(a)(2)(A), in the amount of $1,000.00;

c) Awarding Plaintiff actual damages, pursuant to 15 U.S.C. § 1692k(a)(1);

d) Awarding Plaintiff reasonable attorneys' fees and costs incurred in this action pursuant to 15 U.S.C. § 1692k(a)(3);

e) Awarding Plaintiff pre-judgment and post-judgment interest as permissible by law; and

f) Awarding such other and further relief as the Court may deem just and proper.

COUNT III
VIOLATION OF 15 U.S.C. § 1692e(11)
NCC

51. Plaintiff repeats and re-alleges each and every factual allegation above.

52. NCC violated 15 U.S.C. § 1692e(11) by failing to notify Plaintiff during each communication that the communication was from a debt collector, and by failing to notify Plaintiff during the initial communication that it was attempting to collect a debt and that any information obtained would be used for that purpose.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

a) Adjudging that NCC violated 15 U.S.C. § 1692e(11);

b) Awarding Plaintiff statutory damages, pursuant to 15 U.S.C. § 1692k(a)(2)(A), in the amount of $1,000.00;

c) Awarding Plaintiff actual damages, pursuant to 15 U.S.C. § 1692k(a)(1);

d) Awarding Plaintiff reasonable attorneys' fees and costs incurred in this action pursuant to 15 U.S.C. § 1692k(a)(3);

e) Awarding Plaintiff pre-judgment and post-judgment interest as permissible by law; and

f) Awarding such other and further relief as the Court may deem just and proper.

COUNT IV
VIOLATION OF 15 U.S.C. § 1692g(a)
NCC

53. Plaintiff repeats and re-alleges each and every factual allegation above.

54. NCC violated 15 U.S.C. § 1692g(a) by failing to provide Plaintiff with the notices required by 15 U.S.C. § 1692g(a), either in the initial communication with Plaintiff, or in writing within 5 days thereafter.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

a) Adjudging that NCC violated 15 U.S.C. § 1692g(a);

b) Awarding Plaintiff statutory damages, pursuant to 15 U.S.C. § 1692k(a)(2)(A), in the amount of $1,000.00;

c) Awarding Plaintiff actual damages, pursuant to 15 U.S.C. § 1692k(a)(1);

d) Awarding Plaintiff reasonable attorneys' fees and costs incurred in this action pursuant to 15 U.S.C. § 1692k(a)(3);

e) Awarding Plaintiff pre-judgment and post-judgment interest as permissible by law; and

f) Awarding such other and further relief as the Court may deem just and proper.

COUNT V
VIOLATION OF 47 U.S.C. § 227(b)(1)(A)(iii)
NCC

55. Plaintiff repeats and re-alleges each and every allegation above.

56. NCC violated 47 U.S.C. § 227(b)(1)(A)(iii) by willfully and knowingly placing telephone calls to Plaintiff's cellular telephone number using an automatic telephone dialing system and/or an artificial or pre-recorded voice.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

a) Adjudging that NCC violated 47 U.S.C. § 227(b)(1)(A)(iii);

b) Enjoining NCC from placing any further telephone calls to Plaintiff in violation of the TCPA, pursuant to 47 U.S.C. § 227(b)(3)(A);

c) Awarding Plaintiff statutory damages in the amount of $500.00 per violation, pursuant to 47 U.S.C. § 227(b)(3)(B);

d) Awarding Plaintiff actual damages, pursuant to 47 U.S.C. § 227(b)(3)(B);

e) Awarding Plaintiff treble damages, pursuant to 47 U.S.C. § 227(b)(3);

f) Awarding Plaintiff reasonable attorneys' fees and costs incurred in this action;

g) Awarding Plaintiff any pre-judgment and post-judgment interest as may be allowed under the law; and

h) Awarding other and further relief as this Court may deem just and proper.

COUNT VI
TEX. BUS. & COM. CODE § 305.053
NCC

57. Plaintiff repeats and re-alleges each and every factual allegation above.

58. Plaintiff received communications originated by NCC that violated 47 U.S.C. § 227.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

a) Adjudging that NCC violated 47 U.S.C. § 227;

b) Enjoining NCC from continuing its violative behavior, pursuant to Tex. Bus. & Com. Code § 305.053(a)(1);

c) Awarding Plaintiff statutory damages in the amount of $500.00 per violation, pursuant to Tex. Bus. & Com. Code § 305.053(b);

d) Awarding Plaintiff actual damages, pursuant to Tex. Bus. & Com. Code § 305.053(b);

e) Awarding Plaintiff treble damages, pursuant to Tex. Bus. & Com. Code § 305.053(c);

f) Awarding Plaintiff reasonable attorneys' fees and costs incurred in this action;

g) Awarding Plaintiff any pre-judgment and post-judgment interest as may be allowed under the law;

h) Awarding such other and further relief as the Court may deem just and proper.

COUNT VII
VIOLATION OF 15 U.S.C. § 1692d
PENDRICK

59. Plaintiff repeats and re-alleges each and every factual allegation above.

60. NCC violated 15 U.S.C. § 1692d by engaging in conduct the natural consequence of which is to harass, oppress, or abuse Plaintiff, in connection with the collection of an alleged debt.

61. Pendrick, by virtue of its status as a "debt collector" under the FDCPA, is liable for the conduct of NCC—the debt collector it retained to collect on its behalf.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

a) Adjudging that Pendrick violated 15 U.S.C. § 1692d;
b) Awarding Plaintiff statutory damages, pursuant to 15 U.S.C. § 1692k(a)(2)(A), in the amount of $1,000.00;
c) Awarding Plaintiff actual damages, pursuant to 15 U.S.C. § 1692k(a)(1);
d) Awarding Plaintiff reasonable attorneys' fees and costs incurred in this action pursuant to 15 U.S.C. § 1692k(a)(3);
e) Awarding Plaintiff pre-judgment and post-judgment interest as permissible by law; and
f) Awarding such other and further relief as the Court may deem just and proper.

COUNT VIII
VIOLATION OF 15 U.S.C. § 1692d(6)
PENDRICK

62. Plaintiff repeats and re-alleges each and every factual allegation above.

63. NCC violated 15 U.S.C. § 1692d(6) by placing telephone calls without meaningfully disclosing the caller's individual and/or corporate identity.

64. Pendrick, by virtue of its status as a "debt collector" under the FDCPA, is liable for the conduct of NCC—the debt collector it retained to collect on its behalf.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

a) Adjudging that Pendrick violated 15 U.S.C. § 1692d(6);
b) Awarding Plaintiff statutory damages, pursuant to 15 U.S.C. § 1692k(a)(2)(A), in the amount of $1,000.00;
c) Awarding Plaintiff actual damages, pursuant to 15 U.S.C. § 1692k(a)(1);
d) Awarding Plaintiff reasonable attorneys' fees and costs incurred in this action pursuant to 15 U.S.C. § 1692k(a)(3);
e) Awarding Plaintiff pre-judgment and post-judgment interest as permissible by law; and
f) Awarding such other and further relief as the Court may deem just and proper.

COUNT IX
VIOLATION OF 15 U.S.C. § 1692e(11)
PENDRICK

65. Plaintiff repeats and re-alleges each and every factual allegation above.

66. NCC violated 15 U.S.C. § 1692e(11) by failing to notify Plaintiff during each communication that the communication was from a debt collector, and by failing to notify Plaintiff during the initial communication that it was attempting to collect a debt and that any information obtained would be used for that purpose.

67. Pendrick, by virtue of its status as a "debt collector" under the FDCPA, is liable for the conduct of NCC—the debt collector it retained to collect on its behalf.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

a) Adjudging that Pendrick violated 15 U.S.C. § 1692e(11);

b) Awarding Plaintiff statutory damages, pursuant to 15 U.S.C. § 1692k(a)(2)(A), in the amount of $1,000.00;

c) Awarding Plaintiff actual damages, pursuant to 15 U.S.C. § 1692k(a)(1);

d) Awarding Plaintiff reasonable attorneys' fees and costs incurred in this action pursuant to 15 U.S.C. § 1692k(a)(3);

e) Awarding Plaintiff pre-judgment and post-judgment interest as permissible by law; and

f) Awarding such other and further relief as the Court may deem just and proper.

COUNT X
VIOLATION OF 15 U.S.C. § 1692g(a)
PENDRICK

68. Plaintiff repeats and re-alleges each and every factual allegation above.

69. NCC violated 15 U.S.C. § 1692g(a) by failing to provide Plaintiff with the notices required by 15 U.S.C. § 1692g(a), either in the initial communication with Plaintiff, or in writing within 5 days thereafter.

70. Pendrick, by virtue of its status as a "debt collector" under the FDCPA, is liable for the conduct of NCC—the debt collector it retained to collect on its behalf.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

a) Adjudging that Pendrick violated 15 U.S.C. § 1692g(a);

b) Awarding Plaintiff statutory damages, pursuant to 15 U.S.C. § 1692k(a)(2)(A), in the amount of $1,000.00;

c) Awarding Plaintiff actual damages, pursuant to 15 U.S.C. § 1692k(a)(1);

d) Awarding Plaintiff reasonable attorneys' fees and costs incurred in this action pursuant to 15 U.S.C. § 1692k(a)(3);

e) Awarding Plaintiff pre-judgment and post-judgment interest as permissible by law; and

f) Awarding such other and further relief as the Court may deem just and proper.

COUNT XI
VIOLATION OF 47 U.S.C. § 227(b)(1)(A)(iii)
PENDRICK

71. Plaintiff repeats and re-alleges each and every allegation above.

72. NCC violated 47 U.S.C. § 227(b)(1)(A)(iii) by willfully and knowingly placing telephone calls to Plaintiff's cellular telephone number using an automatic telephone dialing system and/or an artificial or pre-recorded voice.

73. Pendrick is vicariously liable for the conduct of NCC—the debt collector it retained to place calls on its behalf.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

a) Adjudging that Pendrick violated 47 U.S.C. § 227(b)(1)(A)(iii);

b) Enjoining Pendrick from placing any further telephone calls to Plaintiff in violation of the TCPA, pursuant to 47 U.S.C. § 227(b)(3)(A);

c) Awarding Plaintiff statutory damages in the amount of $500.00 per violation, pursuant to 47 U.S.C. § 227(b)(3)(B);

d) Awarding Plaintiff actual damages, pursuant to 47 U.S.C. § 227(b)(3)(B);

e) Awarding Plaintiff treble damages, pursuant to 47 U.S.C. § 227(b)(3);

f) Awarding Plaintiff reasonable attorneys' fees and costs incurred in this action;

g) Awarding Plaintiff any pre-judgment and post-judgment interest as may be allowed under the law; and

h) Awarding other and further relief as this Court may deem just and proper.

COUNT XII
TEX. BUS. & COM. CODE § 305.053
PENDRICK

74. Plaintiff repeats and re-alleges each and every factual allegation above.

75. Plaintiff received communications originated by NCC that violated 47 U.S.C. § 227.

76. Pendrick is vicariously liable for the conduct of NCC—the debt collector it retained to place calls on its behalf.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

a) Adjudging that Pendrick violated 47 U.S.C. § 227;

b) Enjoining Pendrick from continuing its violative behavior, pursuant to Tex. Bus. & Com. Code § 305.053(a)(1);

c) Awarding Plaintiff statutory damages in the amount of $500.00 per violation, pursuant to Tex. Bus. & Com. Code § 305.053(b);

d) Awarding Plaintiff actual damages, pursuant to Tex. Bus. & Com. Code § 305.053(b);

e) Awarding Plaintiff treble damages, pursuant to Tex. Bus. & Com. Code § 305.053(c);

f) Awarding Plaintiff reasonable attorneys' fees and costs incurred in this action;

g) Awarding Plaintiff any pre-judgment and post-judgment interest as may be allowed under the law;

h) Awarding such other and further relief as the Court may deem just and proper.

TRIAL BY JURY

77. Plaintiff is entitled to and hereby demands a trial by jury.

Dated: November 7, 2014

Respectfully submitted,

/s/ Russell S. Thompson IV
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